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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

|                           |   |                                     |
|---------------------------|---|-------------------------------------|
| UNITED STATES OF AMERICA, | ) | No. CR-10-923 SBA                   |
|                           | ) |                                     |
| Plaintiff,                | ) | DEFENDANT'S <i>UNOPPOSED</i> MOTION |
|                           | ) | TO DISMISS PETITION FOR SUMMONS     |
| vs.                       | ) | FOR OFFENDER UNDER SUPERVISION      |
|                           | ) | AND TERMINATE SUPERVISION           |
| ERNESTO SOLON,            | ) |                                     |
|                           | ) |                                     |
| Defendant.                | ) |                                     |
| _____                     | ) |                                     |

On March 12, 2012, Ernesto Solon was sentenced to 24 months custody with one year of supervised release to follow. He commenced that one-year period of supervised release on November 2, 2013. [Petition for Summons, Docket No. 21.] Immediately upon his release from custody, Mr. Solon began working for Atlantic Plant Services as a painter and sandblaster on the new Bay Bridge. He has continued as a full-time employee of Atlantic Plant Services since that time and is currently working on the Richmond Bridge. Mr. Solon's one-year period of supervised release was scheduled to end on November 2, 2014. Mr. Solon was alleged to have submitted a urinalysis test that was positive for cocaine on September 23, 2014. United States Probation submitted a request for a summons alleging a violation of the standard condition that

1 Mr. Solon refrain from any unlawful use of a controlled substance. That petition was signed, and  
 2 a summons was issued by the Court, on November 3, 2014. The issuance of the summons  
 3 occurred the day after the end of Mr. Solon's period of supervised release. For the reasons set  
 4 forth below, the petition must be dismissed because Mr. Solon's term of supervised release  
 5 expired prior to the issuance of the summons.

6 There are circumstances when an alleged violation that occurred prior to the expiration of  
 7 the term of supervised release can be adjudicated following the expiration of that term, but those  
 8 circumstances are not present here. The relevant legal standard is set forth at 18 U.S.C. §  
 9 3583(i):

10 (i) Delayed revocation.--The power of the court to revoke a term of supervised  
 11 release for violation of a condition of supervised release, and to order the  
 12 defendant to serve a term of imprisonment and, subject to the limitations in  
 13 subsection (h), a further term of supervised release, extends beyond the expiration  
 14 of the term of supervised release for any period reasonably necessary for the  
 adjudication of matters arising before its expiration *if, before its expiration, a*  
*warrant or summons has been issued on the basis of an allegation of such a*  
*violation.*

15 18 U.S.C. §3583(i) (emphasis added). In other words, unless a warrant or summons was issued  
 16 *before the expiration of the term of supervised release*, this Court has no power to revoke the  
 17 term of supervised release. *See, e.g., U.S. v. Ceballos-Santa Cruz*, 756 F.3d 635, 637 n.2 (8th  
 18 Cir. 2014) ("Pursuant to 18 U.S.C. § 3583(i), a court can revoke a term of supervised release  
 19 after the term has expired, so long as the violation occurred *and the warrant alleging the*  
 20 *violation* issued before the expiration of the term of supervised release") (emphasis added).

21 In this case, Mr. Solon's term of supervised release expired on November 2, 2014. The  
 22 summons alleging a violation was not issued until November 3, 2014, the day after the expiration  
 23 of the term of supervised release. Because the summons was issued after the expiration of the  
 24 term of supervised release, the Court has no power to revoke the term of supervised release. The  
 25 term has expired and Mr. Solon is no longer under this Court's subject matter jurisdiction.

26 This is an unopposed motion. The undersigned has discussed this matter with both the

1 assigned probation officer, Richard Brown, and the assigned Special Assistant United States  
2 Attorney, Tai Milder. Accordingly, the defendant asks that this Court sign the attached proposed  
3 order and remove the matter from the January 14, 2015 calendar.  
4

5 Dated: January 8, 2015

6 Respectfully submitted,

7 STEVEN G. KALAR  
8 Federal Public Defender

9 /s/ Ned Smock

10 NED SMOCK  
11 Assistant Federal Public Defender  
12  
13  
14

15 **ORDER**

16 For the reasons set forth in the unopposed motion above, the Court ORDERS as follows:  
17 The Petition for Summons for Offender Under Supervision at Docket No. 21 is DISMISSED.  
18 Mr. Solon's term of supervised release has expired and this Court no longer has jurisdiction in  
19 this matter. The admission/disposition of supervised release violation hearing currently  
20 scheduled for January 14, 2015 shall be removed from this Court's calendar.  
21

22 IT IS SO ORDERED.

23 Date: January 12, 2015

24   
25 HON. SAUNDRA BROWN ARMSTRONG  
26 United States District Judge